

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015110400

ORDER DENYING MOTION TO
DISMISS

On November 5, 2015, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming Elk Grove Unified School District. On November 23, 2015, District filed a Motion to Dismiss, alleging that OAH does not have jurisdiction to hear this matter since Student seeks that OAH enforce provisions of the parties' August 2014 settlement agreement. On November 30, 2015, Student filed an opposition.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education”, and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Parents have the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); see also Ed. Code, § 56501, subd. (a).) The jurisdiction of OAH is limited to these matters. (*Wyner v.*

Manhattan Beach Unified Sch. Dist. (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].)

OAH's limited jurisdiction does not include jurisdiction over claims alleging a school district's failure to comply with a settlement agreement. (*Id.* at p. 1030.) In *Wyner*, during the course of a due process hearing the parties reached a settlement agreement in which the school district agreed to provide certain services. The hearing officer ordered the parties to abide by the terms of the agreement. Two years later, the student initiated another due process hearing, and raised claims alleging the school district's failure to comply with the earlier settlement agreement. The California Special Education Hearing Office (SEHO), OAH's predecessor in hearing IDEA due process cases, determined that the issues pertaining to compliance with the earlier order were beyond its jurisdiction, and this ruling was upheld on appeal. The *Wyner* court held that "the proper avenue to enforce SEHO orders" was the California Department of Education's compliance complaint procedure (Cal. Code Regs., tit. 5, § 4650), and that "a subsequent due process hearing was not available to address . . . alleged noncompliance with the settlement agreement and SEHO order in a prior due process hearing." (*Wyner, supra*, 223 F.3d at p. 1030.)

However, in *Pedraza v. Alameda Unified Sch. Dist.* (N.D.Cal., Mar. 27, 2007, No. C 05-04977 VRW) 2007 WL 949603, the District Court held that when the Student is alleging a denial of FAPE as a result of a violation of a settlement agreement, and not merely a breach of the settlement agreement, OAH has jurisdiction to adjudicate claims alleging denial of a free appropriate public education. According to the court in *Pedraza*, issues involving merely a breach of the settlement agreement should be addressed by the California Department of Education's compliance complaint procedure.

DISCUSSION

Student alleges one issue in the complaint that District denied Student a FAPE by failing to develop a timely and adequate plan to transition aide support from a private agency to District personnel as required by the parties' August 2014 settlement agreement.¹ District asserts that OAH does not have jurisdiction to hear Student's complaint because Student requests that OAH enforce the terms of the settlement agreement. In response, Student asserts that OAH has jurisdiction because District's actions in failing to develop an adequate transition denied Student a FAPE, which OAH has jurisdiction to decide.

According to *Pedraza*, if a due process complaint raises issues of denial FAPE and not merely allegations of breach of a settlement agreement, then OAH has jurisdiction to hear the complaint. While Student's complaint refers to the provisions of the August 2014 settlement agreement and District's duties when transitioning aide services from a private agency to District personnel, the issue is whether District denied a FAPE through its

¹ Student erroneously cites to an August 2013 settlement agreement.

purported failure to have its aides properly trained. Because Student alleges a denial of FAPE and not a mere violation of the settlement agreement, OAH has jurisdiction to hear Student's complaint and thus District's motion to dismiss is denied.

ORDER

District's Motion to Dismiss is denied. The matter shall proceed as scheduled.

DATE: December 2, 2015

/s/

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings